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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,814	09/04/2002	Andrew Austen Mortlock	Z70599-1P US	2356
44992	7590	10/01/2008	EXAMINER	
ASTRAZENECA R&D BOSTON 35 GATEHOUSE DRIVE WALTHAM, MA 02451-1215			TRUONG, TAMTHOM NGO	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### **ADVISORY ACTION**

The amendment filed 7-14-08 under 37 CFR 1.116 in response to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered for the following reasons:

- a. The limitations of “aryl substituted C<sub>1-10</sub>alkyl” and “aryl substituted C<sub>1-10</sub>alkyloxy” raise new issues that would require further consideration and/or search.
- b. The argument on the 103 rejection is not persuasive for the following reasons:
  - i. Applicants’ assertion that “varying the X position, the 7 position” to arrive at the claimed compound would be “tenuous”, and encroaching “into the category of hindsight reconstruction.” However, in WO'118, the scope of X and R<sup>1</sup> are not as infinite as applicants assert. The change needed to arrive at the instant compound is within the preferred embodiment of Brown’s teaching (WO'118). Additionally, most of the generic embodiments are covered by the instant claim language. The presence of additional teachings does not derogate the applicability of such a reference. Note, the art cited in *In re Payne*, for example, which is cited in MPEP 2144.09. Also, note *In re Lamberti* 192 USPQ 278, which is cited with approval in *In re Burckel* 201 USPQ 67 (CCPA 1979).
  - ii. The fact that Brown et. al. “expressly favors” a “methoxy at the 7 position” does not constitute a lack of motivation to select from the preferred embodiment substituents and linking groups that would maintain the inhibitory activity on receptor tyrosine kinase. The motivation comes from the equivalency

teaching which allows one skilled in the art to replace one substituent and/or linking group with another.

iii. The fact that Example 19 is not anticipatory does not lessen the validity of the 103 rejection as the group CONR<sub>3</sub> can be replaced by NR<sup>3</sup>CO from the definition of X. Example 19 shows that other substituents (e.g., 2-methoxyethoxy) which are within the scope of the instant X<sup>1</sup>R<sup>15'</sup> could be at the 7-position as well. Furthermore, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMTHOM N. TRUONG whose telephone number is (571)272-0676. The examiner can normally be reached on M, T and Th (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tamthom N. Truong/

**/James O. Wilson/  
Supervisory Patent Examiner, Art Unit 1624**

*Tamthom N. Truong  
Examiner, Art Unit 1624*

9-23-08